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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 8, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: Implementation of Section 25 of the Cable Television Consumer Protection
And Competition Act of 1992: Digital Broadcast Satellite Public Service Obligations
Ex parte presentation in MM Docket No. 93-25 ✓

Dear Ms. Salas:

Enclosed please find the original and three copies of the Comments of the Consortium for School Networking (CoSN) and the International Society for Technology in Education (ISTE) on the above-captioned matter, pursuant to Section 1.1206(b)(2) of the Commission's rules. Copies of the enclosed have also been provided directly to Commission Chairman William E. Kennard, Commissioners Susan Ness, Michael K. Powell, Gloria Tristani, and Harold W. Furchgott-Roth. Legal advisors to the Commissioners, Ari Fitzgerald, Anita Wallgren, Jane Mago, Rick Chesson, and Helgi Walker were also provided with individual copies of these Comments, as were International Bureau Chief Regina M. Keeney, Senior Legal Advisor Rebecca Arbogast, and Legal Advisor Rosalee Chiara.

Sincerely,

Leslie Harris, Esq.

Liza Kessler, Esq.

Attorneys for the Commentators

CC: William E. Kennard, Susan Ness, Michael K. Powell, Gloria Tristani, and Harold W. Furchgott-Roth, Ari Fitzgerald, Anita Wallgren, Jane Mago, Rick Chesson, Helgi Walker, Regina M. Keeney, Rebecca Arbogast, and Rosalee Chiara

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Before the
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OFFICE OF THE SECRETARY

In the matter of Section 25
Of the Cable Television Consumer
Progression and Competition Act
Of 1992

MM Docket No. 93-25

Direct Broadcast Satellite
Public Service Organizations

COMMENTS OF THE CONSORTIUM FOR SCHOOL NETWORKING (CoSN)
AND
INTERNATIONAL SOCIETY FOR TECHNOLOGY IN EDUCATION (ISTE)

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Counsel for CoSN and ISTE

SUMMARY

The Consortium for School Networking (CoSN) and the International Society for Technology in Education (ISTE) represent a wide range of the K-12 educational technology community. Members include thousands of educators who have strong interest in bringing new technology into the classroom and expanding distance learning opportunities. CoSN promotes the use of telecommunications in K-12 education to improve learning; its membership includes state and local education agencies, nonprofits, companies and individuals who share this vision. ISTE is the largest teacher-based nonprofit organization in the field of educational technology. Its mission is to help K-12 classroom teachers and administrators share effective methods for enhancing student learning through the use of new classroom technologies. CoSN and ISTE members are excited about the resource DBS technology makes available, and recognize the potential that satellite technology has to expand the opportunities for distance learning.

Accordingly, CoSN and ISTE have a strong interest in the development of educational capacity within satellite technology, and in assuring that rules promulgated to implement Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 protect and expand that interest. To that end, CoSN and ISTE urge that:

- I. The FCC should not permit DBS service providers any editorial control over what programming to include in that set-aside. Instead, the FCC should require that an independent nonprofit entity make such determinations on a content-neutral basis, or as a minimal alternative, promulgate content-neutral rules DBS service providers must use to determine whether an item proposed for broadcast is in the public interest.
- II. The FCC should require that DBS service providers set aside the full 7% of DBS broadcast capacity Congress contemplated reserving for the public, noncommercial interest.
- III. The FCC should adopt rules that assure that all categories of noncommercial programmers have access to the set-aside, including producers of material for the K-12 educational community.

I. DBS SERVICE PROVIDERS SHOULD NOT HAVE ANY EDITORIAL CONTROL OVER PROGRAMMING OF THE SET-ASIDE CAPACITY

If the DBS industry decides which noncommercial educational programs, or which noncommercial programming providers, it will provide access to under this set-aside, the public will not get the best mixture of educational programming. Industry decision-makers may be biased towards "profitable non-profit" or "low cost" programs, or against those that may not appeal to a broader audience. While individual subscribers may appropriately decide not to watch such programming, they should have control over that decision, not a DBS service provider.

CoSN and ISTE are concerned that educational programming for K-12 will be particularly disfavored if DBS service providers maintain editorial control over programmers. Programming directed at the educational needs of children has never been a priority of broadcasters or cable operators and we doubt that DBS operators will do any better. K-12

programming is tailored to a very narrow but important audience (often a program is only designed to reach one grade level) and is unlikely to attract a broader audience outside of the classroom. For this reason, DBS operators, who are principally concerned with building market share and attracting a broad subscribership, should not be making editorial decisions whether about the content of a particular program, or about which noncommercial programmer should be included in the set-aside. In our view, exercise of editorial judgment in either situation will yield the same result: less noncommercial educational programming for children. A neutral decisionmaker is critical if K-12 programming is to receive its fair share of the set-aside.

We understand that a proposal has been made by MAP/DAETC to provide DBS operators several options for compliance with the statutory mandate that that precludes editorial control over content. *Ex Parte from Gigi Sohn, Media Access Project, September 29, 1998*. We have no objection to the concept of allowing nonprofit consortium or organizations funded in part by the DBS operators to make editorial decisions, provided that such entities operate at arms length from the DBS providers. As we explain below however, we believe that the FCC must take some steps to assure that all categories of eligible entities have equal access to the set aside. For that reason, ISTE and CoSN do not support the option of a leased access “first come first served” model unless equal access for all types of eligible entities is somehow assured.

II. THE FCC SHOULD SET ASIDE THE FULL SEVEN PERCENT OF CAPACITY FOR PUBLIC INTEREST AND EDUCATIONAL PROGRAMMING

When Congress indicated that DBS systems should set aside between 4 – 7% of their capacity for public interest programming, they granted the FCC rulemaking flexibility in order to accommodate DBS systems of differing sizes, and expected that large systems should set aside more capacity than small systems. (H.R. Rep. No. 102-862, at 100 (1992)). At that time, it was considered a remote possibility that a DBS system could provide hundreds of channels. However, in 1998, all of the existing DBS systems are large by the standards in existence in 1992, with the average size approximately 200 channels. DBS systems offering 500 or more channels are expected to come on the market soon. There would be no hardship to any of the existing DBS systems if the FCC required them to set aside the full 7% contemplated by Congress; their growth has been explosive, and such a set-aside would not slow it in any way.

CoSN and ISTE would not object to the compromise proposed by the Media Access Project/DAETC, whereby a DBS service provider could reduce by one the number of public interest channels it must provide for every grant of 0.5% of gross income provided to noncommercial educational programming content providers. However, CoSN and ISTE suggest that a cap be placed on the total number of DBS channels or percentage of noncommercial programming time a DBS service provider may eliminate in this manner. Also, if the FCC adopts this compromise, we urge the adoption of rules to ensure that funding is equitably distributed among different types of content producers.

III. THE FCC SHOULD ENSURE THAT ALL CATEGORIES OF ELIGIBLE PROGRAMMERS HAVE ACCESS TO THE SET-ASIDE CAPACITY, INCLUDING K-12 EDUCATIONAL INSTITUTIONS

In addition to an overall 7% set-aside of DBS capacity, the FCC should take steps to ensure that the three categories of noncommercial educational programmers identified by Congress—noncommercial educational television stations, other public telecommunications entities, and public or private educational institutions—all have access to the set-aside capacity.

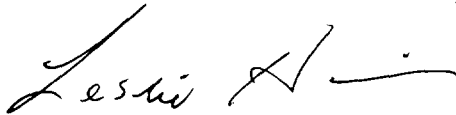
We generally support the Research TV recommendation that a minimum of one-third of the set-aside be reserved for the use of accredited educational institutions including both elementary and secondary schools, community and technical colleges, and research universities. *Comments of Research TV, April 28, 1997.* CoSN and ISTE are particularly concerned that programming directed towards children in the K-12 age range will not develop in a timely manner without such a mandate.

In our view, a reservation of capacity for educational programming would encourage the investment in K-12 programming and foster partnerships with public television, higher education, and other nonprofit programmers, many of which have far greater resources and expertise in the development of educational programming and distance learning than most K-12 institutions.

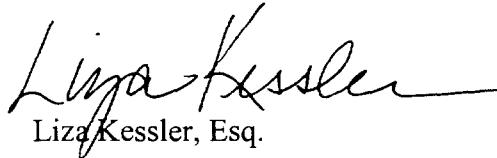
CONCLUSION

DBS technology is one of the new technologies that holds great promise for K-12 education. CoSN and ISTE urge that the FCC adopt the policies outlined above in order to assure that the value of DBS is fully recognized as an educational tool.

RESPECTFULLY SUBMITTED,



Leslie Harris, Esq.



Liza Kessler, Esq.

Counsel for CoSN and ISTE